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February 18, 2016
LETTER-MOTION – FILED VIA ECF

The Honorable Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square, Room 2203
New York, NY 10007

Re: ***Johnson v. FlexCo, LLC***
Civil Action No. 15-cv-7530 (RA)
Letter-Motion to Adjourn and Reschedule Initial Pretrial Conference

Dear Judge Abrams,

We represent the Plaintiff, Eric Johnson ("Plaintiff"), in the above-captioned action. Pursuant to Rules 5.2 and 7.1 of the Local Rules of the U.S. District Court for the Southern District of New York, Rule 13.1 of the Electronic Case Filing Rules & Instructions of the U.S. District Court for the Southern District of New York, and the Individual Rules & Practices in Civil Cases of Your Honor, Plaintiff, by and through his undersigned attorney, hereby respectfully moves the Court for adjournment and rescheduling of the Initial Pretrial Conference, currently scheduled for February 19, 2016 at 4:30 p.m. (*see* Docket No. 15), to a date and time convenient to the Court.

The Initial Pretrial Conference was initially scheduled for December 4, 2015 at 11:30 a.m. (*see* Docket No. 8), and was adjourned by Order of the Court on November 30, 2015 (*see* Docket No. 13) on the basis that Defendant Flexco, at the time the only named defendant in the action, had failed to respond to the Complaint, and that Plaintiff had accordingly filed for a certificate of default and intended to move for default judgment (*see* Docket No. 12).

Subsequently, on December 21, 2015, Plaintiff moved for leave to file an amended complaint adding an individual co-defendant to this action and for rescheduling of the Initial Pretrial Conference (*see* Docket No. 14). The Court issued an Order granting Plaintiff's motion on December 28, 2015, setting deadlines of January 15, 2016 for Plaintiff to file his amended complaint and February 5, 2016 to serve the amended complaint upon Defendants, and rescheduling the previously-adjourned Initial Pretrial Conference for February 19, 2016 at 4:30 p.m. (*see* Docket No. 15).

Plaintiff thereafter acted with diligence to satisfy the deadlines set by the Court. Plaintiff's amended complaint was filed on January 8, 2016 (*see* Docket No. 16), and Defendants were served with the amended complaint on February 2, 2016 (after difficulties with completing service as described in detail by Plaintiff's process server in its affidavits of service) (*see* Docket Nos. 21, 23). Accordingly, both Defendants' deadline to respond to the amended complaint is February 23, 2016.

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To date, neither Defendant has responded to the amended complaint or otherwise appeared in this action. In the event Defendants fail to respond to the amended complaint or appear by February 23, 2016, Plaintiff intends to move for default judgments against Defendants.

Accordingly, Plaintiff respectfully requests that the Court issue an order adjourning the Initial Pretrial Conference and rescheduling the Initial Pretrial Conference for a date and time convenient to the Court later than February 23, 2016, Defendants' deadline to respond to Plaintiff's amended complaint. (In the event Defendants fail to respond to the complaint or appear in this action by February 23, 2016, Plaintiff shall request that default be entered against Defendants at that time, and, should the Court grant this Letter-Motion to reschedule the Initial Pretrial Conference, shall also alert the Court of Defendants' failure to appear by letter-motion to adjourn the rescheduled Initial Pretrial Conference.)

Undersigned counsel acknowledges and apologies to the Court for the short notice in making this request. We desired to allow Defendants as much time as possible to respond to the amended complaint or otherwise appear before making this request in the hopes that the Initial Pretrial Conference, already having been adjourned once, could be held on the rescheduled date. However, in light of the fact that Defendants have not appeared in this action (including, with respect to Defendant FlexCo, despite having been served with the initial complaint on November 3, 2015 [*see* Docket No. 10] *and* served with the amended complaint on February 2, 2016 [*see* Docket No. 23]), it appears that holding the Initial Pretrial Conference without Defendants, and with Plaintiff intending to move for default next week should Defendants fail to meet their February 23, 2016 deadline to respond to the amended complaint, would be a waste of the Court's time and resources.

Because neither Defendant has appeared in this action, neither Defendant has consented to the requested adjournment of the Initial Pretrial Conference. This is Plaintiff's second request for adjournment and rescheduling of the Initial Pretrial Conference.

Thank you for your time and consideration.

Very truly yours,

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